

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
JOHN D. WHELAN, M.D. :
RESPONDENT. : **0006138**

Division of Legal Services and Compliance Case No. 16 MED 139

The parties to this action for the purpose of Wis. Stat. § 227.53 are:

John D. Whelan, M.D.
170 West Pioneer Rd Apt 102
Fond Du Lac, WI 54935

Wisconsin Medical Examining Board
P.O. Box 8366
Madison, WI 53708-8366

Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190
Madison, WI 53707-7190

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Medical Examining Board (Board). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent John D. Whelan, M.D. (DOB September 4, 1946), is licensed in the state of Wisconsin to practice medicine and surgery, having license number 36165-20, first issued on November 18, 1994, with registration current through October 31, 2019. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 170 West Pioneer Road, Apartment 102, Fond Du Lac, Wisconsin 54935.

2. On February 3, 2016, Patient A, a male born in 1963, was involuntarily admitted to the Fond du Lac County Health Care Center (Center) based on reports he damaged and caused a disturbance at a group home where he resided.

3. Patient A was discharged from the Center back to a group home on February 15, 2016. During his admission at the Center, Respondent acted as Patient A's treating psychiatrist.

4. Respondent testified under oath at a competency hearing that Patient A was not competent to make medical decisions for himself.

5. At all times during his admission at the Center, Patient A had an activated Power of Attorney for Health Care, his sister LH.

6. While treating Patient A at the Center, and without consulting LH or any of Patient A's other treating providers, Respondent discontinued "superfluous medications" including one which had recently been prescribed to Patient A by a surgeon subsequent to a gastrointestinal surgery.

7. While treating Patient A at the Center, and without consulting LH or any of Patient A's other treating providers, Respondent prescribed an injectable anti-psychotic medication without a clear diagnosis of psychosis, and without any history of Patient A failing to take oral medications.

8. Respondent's charting of his care of Patient A reflects hostility and resistance to LH's involvement in Patient A's care, even though she held an activated Power of Attorney for Health Care for Patient A.

CONCLUSIONS OF LAW

1. The Wisconsin Medical Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 448.02(3), and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. By the conduct described in the Findings of Fact, Respondent John D. Whelan, M.D., engaged in unprofessional conduct as defined by Wis. Admin. Code § Med 10.03(2)(b), by departing from or failing to conform to the standard of minimally competent medical practice which creates an unacceptable risk of harm to a patient or the public whether or not the act or omission resulted in actual harm to any person.

3. By the conduct described in the Findings of Fact, Respondent John D. Whelan, M.D., engaged in unprofessional conduct as defined by Wis. Admin. Code § Med 10.03(2)(j), by performing an act constituting the practice of medicine and surgery without required informed consent under s. 448.30, Stats.

4. As a result of the above conduct, John D. Whelan, M.D., is subject to discipline pursuant to Wis. Stat. § 448.02(3).

ORDER

1. The attached Stipulation is accepted.
2. Respondent John D. Whelan, M.D., is REPRIMANDED.

3. Within 90 days from the date of this Order, John D. Whelan, M.D., shall pay COSTS of this matter in the amount of \$1,025.00.

4. Costs shall be made payable to the Wisconsin Department of Safety and Professional Services and sent to the Department Monitor at the address below:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53705-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

You may also submit payment online via DSPS' Monitoring Case Management System, here:
<https://app.wi.gov/DSPSMonitoring>

5. In the event Respondent violates any term of this Order, Respondent's license (no. 36165-20) or Respondent's right to renew his license, may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of the Order. The Board may, in addition and/or in the alternative refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

6. This Order is effective on the date of its signing.

WISCONSIN MEDICAL EXAMINING BOARD

by: 
A Member of the Board


Date

RECEIVED

STATE OF WISCONSIN
BEFORE THE MEDICAL EXAMINING BOARD

APR 01 2019

DEPARTMENT OF SAFETY & PROFESSIONAL SERVICES
DIVISION OF LEGAL SERVICES & COMPLIANCE

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

JOHN D. WHELAN, M.D.,
RESPONDENT.

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:
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:
:

STIPULATION

0006138

Division of Legal Services and Compliance Case No. 16 MED 139

Respondent John D. Whelan, M.D., and the Division of Legal Services and Compliance, Department of Safety and Professional Services stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondent consents to the resolution of this investigation by Stipulation.

2. Respondent understands that by signing this Stipulation, Respondent voluntarily and knowingly waives the following rights:

- the right to a hearing on the allegations against Respondent, at which time the State has the burden of proving those allegations by a preponderance of the evidence;
- the right to confront and cross-examine the witnesses against Respondent;
- the right to call witnesses on Respondent's behalf and to compel their attendance by subpoena;
- the right to testify on Respondent's own behalf;
- the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
- the right to petition for rehearing; and
- all other applicable rights afforded to Respondent under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondent is aware of Respondent's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Wisconsin Medical Examining Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division

of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondent, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

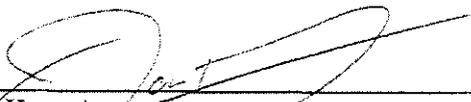
7. Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Legal Services and Compliance joins Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Accepted.

John D. Whelan M.D., M.Sc.
John D. Whelan, M.D., Respondent
170 West Pioneer Rd., Apt. 102
Fond du Lac, WI 54935
License no. 36165-20

Mar 29, 2019
Date


Joost Kap, Attorney
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

4/3/19
Date